

In the Matter of Hiran Patel, Department Law and Public Safety
CSC Docket No. 2011-4018
(Civil Service Commission, decided June 1, 2011)

The Director of the Division of Selection Services (Selection Services) petitions the Civil Service Commission (Commission) for enforcement of the attached decision rendered on January 14, 2009, wherein the Commission ordered that Hiran Patel be removed from his provisional title upon his failure to pass the promotional examination for Section Supervisor Fiscal Resources (PS7410P), Department of Law and Public Safety.

By way of background, Selection Services declared Patel ineligible for the subject promotional examination which was announced in January 2008, finding that he was below the minimum requirements in education. Specifically, pursuant to an evaluation of his transcripts, Patel possessed the equivalent of 91.5 semester hour credits of undergraduate study obtained in India including the required 21 credits in finance, economics and/or accounting courses, rather than the required Bachelor's Degree. Patel appealed the determination to the Commission stating that his education was accepted for three prior promotional examinations for the subject title. Further, Patel has been serving provisionally in the title since June 29, 2002. The Commission found that while it was unclear as to why Patel was deemed eligible for prior examinations, he clearly did not meet the educational requirements of the title. However, based upon his possession of the required 21 credits in applicable coursework, his long term provisional service in the subject title and the fact that he was the sole applicant, the Commission relaxed the educational requirements on a one time basis and allowed him to take the examination. In this regard, the Commission ordered the appointing authority to remove Patel from his provisional title of Section Supervisor Fiscal Resources if he did not pass the examination. Subsequently, Patel did not pass the examination but remained in the title.

In its petition to the Commission, Selection Services requests that Patel be returned to his former permanent title retroactive to the January 14, 2009 date of the Commission's determination. In this regard, Selection Services states that five promotional announcements have been issued for Patel, including one issued subsequent to the examination for PS7410P,¹ and he has failed each examination. Additionally, Selection Services indicates that Patel was the only applicant for all of the examinations and that while it has contacted the appointing authority several times regarding Patel's status, no action has been taken by the appointing authority. Further, Selection Services indicates that the appointing authority

¹ It is noted that Patel's failing score for examination PS1506P, which was announced in December 2008 and administered in April 2009 was applied to symbol PS7410P, since he had already taken the examination for symbol PS1506P.

submitted a request for an evaluation of Patel's credentials for the title of Manager 1 Fiscal Resources and was advised that he did not satisfy the requirements of that title. Finally, Selection Services requests that the appointing authority be fined the amount of overpayment Patel received for his time in the title of Section Supervisor Fiscal Resources, retroactive to the date of the Commission's determination.

In response, the appointing authority states that it has returned Patel to his former permanent title of Administrative Analyst 1.² Additionally, it requests that the Commission consider the circumstances which led to the delay in complying with Patel's removal from his provisional title. Specifically, the appointing authority indicates that Patel continued to successfully perform the duties of the position and due to operational necessity, he was required to perform those duties. Further, it asserts that while it diligently searched for an appropriate title, Patel was deemed unqualified for the alternate title of Manager 1 Fiscal Resources and a lack of staff resulted in him remaining in the Section Supervisor Fiscal Resources title. Thus, the appointing authority states that it did not intentionally intend to disregard the Commission's order and regrets the delay in removing Patel from his provisional title. In this regard, the appointing authority requests that the Commission reconsider Selection Service's recommendation of the assessment of a fine in this matter.

CONCLUSION

In the instant matter, Selection Services requests that the Department of Law and Public Safety comply with the Commission's order to remove Hiran Patel from his provisional appointment for failure to pass the promotional examination for Section Supervisor Fiscal Resources and that it be assessed a fine for the salary Patel has been overpaid since January 2009. A review of the record reveals that Patel has failed four promotional examinations for Section Supervisor Fiscal Resources, a title for which he is not qualified, and nevertheless in which he has been provisionally serving for nearly nine years. Additionally, Civil Service rules were relaxed on a one time basis in order to afford him another chance to pass the examination and achieve permanency, to no avail. Thus, the appointing authority was in non-compliance with the Commission's order as of April 2009 when Patel failed the examination and Patel was permitted to remain in the title without demonstrating through the examination process that he was qualified under Civil Service rules to do so. Further, the appointing authority's assertion that it did not intentionally disregard the Commission's order is unpersuasive. In this regard, allowing Patel to remain provisional in the title required Selection Services to go through the costly selection process which includes announcing an examination,

² A review of official personnel records reveals that Patel was returned to his former permanent title effective April 23, 2011. This occurred after the appointing authority was notified of this enforcement action.

application review, examination administration and review as well as the associated appeals, a total of five times. Further, while the Commission acknowledges the operational needs of the appointing authority, it cannot allow an employee who does not meet the requirements of a position to continue in such a position. To do so would be to undermine the essential tenets of the entire Civil Service system. Moreover, the Commission is wholly unmoved by the appointing authority's assertion that some of the delay in returning Patel to his permanent title occurred while it searched for an alternate title. While this statement is undoubtedly true, it is evidence, in and of itself, of the level of non-compliance by the appointing authority in this matter. In its January 2009 decision, the Commission did not indicate that an alternate title should be found for Patel if he should fail the examination, but rather, that he should be removed from his provisional title. The fact that the appointing authority apparently continued to seek alternate titles that Patel also did not qualify for until April 2011, two years after Patel failed the examination and after Selection Services requested the subject enforcement action, does not mitigate, but in fact illustrates, its non-compliance with the Commission's prior order.

The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for non-compliance or violation of Civil Service law or rules of any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989).* In this matter, since more than two years have passed since the Commission's prior decision and Patel's failure to pass the examination, it is appropriate that the appointing authority be fined for its non-compliance. Therefore, rather than, as Selection Services suggests, fining the appointing authority the amount of Patel's salary overpayment,³ the Commission finds that it is reasonable that the appointing authority be fined the equivalent of the cost of the last two selection processes, which is \$3,204.⁴ The Commission notes that it does not condone the appointing authority's actions in this matter and will, in future similar circumstances, levy much weightier fines for such non-compliance.

ORDER

Therefore, it is ordered that the appointing authority be fined \$3,204, to be remitted within 30 days of issuance of this order, for its non-compliance with the January 14, 2009 Commission decision pursuant to *N.J.A.C. 4A:10-2.1*.

³ This is technically not a salary overpayment as Patel was provisionally appointed to the Section Supervisor Fiscal Resources title and, apparently, actually performed the duties of that title.

⁴ The cost of the selection process for one State promotional examination is \$1,602.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.